No. 10593

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

FRANK KRAMER,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLEE'S REPLY BRIEF.

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FRANK KRAMER,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLEE'S REPLY BRIEF.

Jurisdictional Statement.

(A) *The United States District Court* for the Southern District of California had jurisdiction of the appellant and subject-matter as to count one of the indictment under Section 174 of Title 21, United States Code, making it unlawful for any person to fraudulently or knowingly import any narcotic drug into the United States contrary to law, and, in count two of the indictment under the same section and title, to knowingly or unlawfully conceal or facilitate the transportation of any narcotic drug after importation. Similarly the United States District Court for the Southern District of California had jurisdiction of both appellant and subject-matter as to count three of the indictment under Section 88, Title 18, United States Code, defining the crime of conspiracy.

(B) *The indictment* alleged in count one that appellant Frank Kramer, Katherine Wilson, and Edgar Wallace on or about April 27, 1943, at San Ysidro, San Diego County, California, did then and there knowingly, wilfully, unlawfully, feloniously, and fraudulently import and bring into the United States from the Republic of Mexico certain narcotic drugs, to-wit: approximately 8 ounces of smoking opium, contrary to law.

Count two of the indictment alleged that each of the above defendants on or about April 27, 1943, at San Ysidro did then and there knowingly, wilfully, unlawfully, feloniously, and fraudulently receive, conceal, buy, sell, and facilitate the transportation and concealment of approximately 8 ounces of smoking opium after importation of the narcotic.

The final count of the indictment charged appellant and defendants with a conspiracy and alleged in substance that prior to the dates of the commission of the alleged overt acts set forth in the indictment and continuously thereafter to and including the date of its presentation defendants did knowingly and feloniously conspire and confederate to commit those offenses previously charged in the indictment. Five overt acts were alleged in support thereof.

(C) *This court has jurisdiction* of the appeal under the provisions of Section 225(a) and (d), Title 28, United States Code.

Statement of the Case.

This is an appeal by appellant Frank Kramer from a judgment after trial in the District Court and a finding of guilt on all three offenses as charged in the indictment, sentencing appellant for a period of 2 years on each count, each sentence of imprisonment to begin and run concurrently with each of the other two counts. A jury was waived in the District Court by the respective parties with the consent of the trial judge.

Summary of the Evidence.

Appellant in his opening brief, commencing at page 2 thereof, purports to set forth a summary of the evidence introduced at the trial of the cause. As that summary neglects to depict some of the more important evidence disclosed at the time of trial and as appellant contends that the judgment of the court is not only contrary to the law but also to the evidence, it is perhaps advisable for the government to herein set forth a more accurate statement of the evidence produced in the District Court.

Evidence.

Appellant Kramer, a garage keeper and dealer in second-hand automobiles in the city of Los Angeles, on April 26, 1943, began a transaction to sell defendant Edgar Wallace, a negro, a 1941 Ford automobile belonging to one Cusack. [R. 49-51, 54, 62.] On April 26, 1943, appellant and his wife, Mrs. Rose Kramer, defendant Katherine Wilson, Mrs. Gertrude Irvin, and defendant Edgar Wallace, together with his wife, drove from the city of Los Angeles in the Ford automobile to San Diego apparently to arrange financing the vehicle at a

branch of the Bank of America where defendant Wallace was known. The party arrived in San Diego sometime early in the morning of the 27th and all six of the persons previously referred to passed the early hours of the morning at the Wallace house. [R. 27, 31, 54, 62.]

At about 10:00 o'clock a. m., that morning, the date set forth in the indictment for the commission of the offenses, appellant Kramer, together with his wife, Rose Kramer, defendant Wallace, and Katherine Wilson proceeded to the Bank of America to arrange financing of the automobile, but, as Wallace was unable to meet the terms imposed by the bank, the expected financing could not be arranged. Wallace thereupon changed approximately $240.00 into $2.00 bills for himself and members of the party in order that this sum could be carried across the international line separating the United States and the Republic of Mexico. [R. 23-26, 54, 63.] The party then proceeded to the border town of Tijuana, Mexico, and arrived there at approximately 11:00 a. m. [R. 27.]

After arriving in Tijuana, the three women, Rose Kramer, Katherine Wilson, and Gertrude Irvin, the latter two being members of the negro race, departed from the men and proceeded to shop approximately 2 or 3 hours in the various stores and shops located in the town. [R. 34, 56, 59.] Thereupon the two men, appellant Kramer and defendant Wallace, drove away. Customs Patrol Inspector George Buncasel at about 11:30 or 12:00 noon observed the Ford sedan with the two men in it and followed the vehicle for about an hour as it was being driven about Tijuana. At Fifth Street near Avenue Revolution the car stopped and Wallace entered the side door of a saloon, where he spent several minutes. He soon re-

turned and the car proceeded to the business section of the town where it was parked and appellant Kramer entered a combination billiard hall and restaurant, known as "La Corona." Wallace, however, loitered about the street until appellant returned. Upon Kramer's return they proceeded to a place known as "Enrugui's" where Wallace entered the building and returned in about 5 minutes, whereupon the pair drove toward the main thoroughfare. Inspector Buncasel then returned to his station at the San Ysidro point of entry. [R. 43-44.]

Shortly thereafter the appellant and Wallace contacted a Mexican boy named "Joe," allegedly to find them some Mexican girls. [R. 56-57, 63.] However, before they had an opportunity to find the girls they met the three women of their party and all decided to drive to the Mexican guide's house near an abandoned race track. All members of the party except Katherine Wilson entered the house where they remained for a short time and all thereafter returned to the business section of the town. [R. 34, 40, 45, 55-57, 63, 64.] Upon reaching the main street the women were let out of the automobile and the men again drove away to return in approximately one and one-half hours. The women during this interval continued to shop. [R. 27, 34, 55, 57, 59.] At the end of this period appellant and defendant Wallace returned to the main street of Tijuana where they met defendant Katherine Wilson; Mrs. Kramer, however, was in a store trying on a hat. As they were walking down the street toward the store where appellant's wife was making her purchases, appellant handed defendant Katherine Wilson a Hershey's cocoa can containing approximately 8 ounces of smoking opium and a package containing several

hypodermic needles and stated, "Here, carry this." Defendant Wilson apparently thought nothing of this request and placed the can and package of hypodermic needles in her coat pocket. They then proceeded to the store to contact Mrs. Kramer. At the store, however, appellant asked Katherine Wilson where she had placed the packages and on being informed that they were in her pocket stated, "You better put it away good." Subsequently but prior to leaving Tijuana, Mrs. Kramer asked appellant to purchase some stockings for defendant Wilson. In response to this request appellant stated to Miss Wilson, "Buy you some? * * * Well, you will have to work for it." [R. 27-28, 34-36, 41-42.] After leaving the store Miss Wilson went into the restroom of the Long Bar where she placed the can of opium in her brassiere and the small package containing the hypodermic needles in her shirt waist pocket. [R. 28-29, 36.] Thereupon the five persons returned to the port of entry at San Ysidro at approximately 4:00 or 4:30 in the afternoon of the same day. [R. 45-46.]

As San Ysidro, after the five persons crossed the international line separating the United States and the Republic of Mexico, Customs Guard J. T. Mitchell inspected the Ford sedan and informed the party that they had been seen where narcotics were sold and then asked each person for his declaration. Appellant Kramer stated that he had brought nothing from Mexico; defendant Wilson declared some hose; Wallace stated that he had brought nothing from Mexico, while Mrs. Kramer and Mrs.

Irvin declared small purchases of cosmetics, hose, and slippers. The guard thereupon asked all persons in the car if they had anything else to declare and when answered in the negative requested that the automobile be driven to the side of the inspection station. Acting Inspectress Mary Clark and another proceeded to search the women and in the course of the examination the Hershey's cocoa can containing the opium and the needles were found on the person of Katherine Wilson. Subsequently appellant Kramer, Wallace, and defendant Wilson were questioned by the customs agents; the former two denied any knowledge of the narcotics or needles. However, Katherine Wilson signed a typewritten statement in which she stated that she had received the opium from a Mexican named "Frank," who requested her to deliver the can at the Santa Fe Bus Depot at San Diego. Thereupon several customs officers took defendant Wilson to the depot for the purpose of identifying the Mexican. When no such person was found, she was returned to the Customs and Court House Building, where she admitted that appellant gave her the narcotics and needles to bring across the international line. [R. 37-38, 41, 46, 48, 53, 64.]

The record discloses that appellant Kramer had a previous criminal record involving burglary and impersonation of a federal officer and that Wallace had been convicted of felonies involving thefts and violations of the Harrison Narcotic Act; similarly, both Mrs. Irvin and defendant Katherine Wilson had been previously charged with narcotic violations under the state laws, Mrs. Irvin having served a penitentiary sentence. [R. 30-31, 39, 58. 66.]

Questions Presented by the Appeal.

I. Relating to count one as charged by the government in the indictment, was the judgment of the court as to appellant Kramer contrary to the law and evidence as appellant was charged therein as a principal rather than "assisting" in the commission of the offense?

II. As the evidence of the government disclosed that Katherine Wilson had the opium concealed on her person after crossing the border, could appellant be properly charged in count two of the indictment with having unlawfully and feloniously received, concealed, and facilitated the transportation after importation of the narcotics?

III. Was the conviction of appellant based upon the offenses enumerated in counts one and two of the indictment a bar to appellant's conviction of a conspiracy to commit those substantive offenses?

IV. Was the evidence as presented by the government sufficient to sustain and justify the conviction on any one of the three counts?

ARGUMENT.

I.

Under the Evidence and the Law Appellant Was Properly Charged in the Indictment as a Principal.

In this connection it is contended by appellant at page 8 of his opening brief that

> "As the importation takes place the minute the narcotics cross the boundary line, certainly Frank Kramer did not import the narcotics. He was not specifically charged with 'assisting' in so doing, as he could have been, so therefore as a matter of law, he was not specifically guilty of the offense charged in Count I."

Appellant, however, has apparently overlooked the provisions of Section 550, Title 18, United States Code. That section reads as follows:

> " 'Principals' defined. Whoever directly commits any act constituting an offense defined in any law of the United States, or aids, abets, counsels, commands, induces, or procures its commission, is a principal."

Thus this act of Congress abolishes the distinction between principals, accessories, aiders, and abetters, and, when it is disclosed by the evidence that appellant must be considered as having procured and aided the commission of the offense charged in the indictment, he is properly charged as a principal.

A similar question was raised in the case of

Jin Fuey Moy v. United States, 254 U. S. 189, 41 Sup. Ct. 98, 65 L. Ed. 214.

There the indictment directly charged a physician with the unlawful sale of narcotic drugs. The Supreme Court held that the indictment could be construed under this section (Section 550, Title 18, United States Code) as charging that the physician aided and abetted a sale by another and that proof that he aided an unlawful sale by a druggist, by means of an unauthorized prescription, sustained the charge of a sale not made by himself.

Likewise, in

Brickey v. United States, 123 F. (2d) 341, 345, 346 (C. C. A. 8th),

it was concluded that an official of a bank who had been charged as a principal in the indictment for making false entries in a report to the Federal Deposit and Insurance Corporation could be convicted and punished as a principal upon proof that he merely directed another to make the false entries.

In

Colbeck et al. v. United States, 10 F. (2d) 401 (C. C. A. 7th),

the question of indicting an accessory as a principal again arose. The Circuit Court of Appeals in discussing this assignment of alleged error stated at page 403:

> "Under section 332 of the Criminal Code (Comp. St. §10506), accessories before the fact are principals, and it has been held that an accessory before

the fact may be charged as a principal, and the charge will be sustained by proof showing him to be an accessory before the fact."

Citing:

Vane v. United States, 254 Fed. 32 (C. C. A. 9th);

Di Preta v. United States, 270 Fed. 73 (C. C. A. 2d).

It would appear that the assignment of alleged error raised by appellant in point I of his opening brief has no merit and an extended discussion of this point would serve no useful purpose as the matter has been settled not only by the cases cited, *supra,* but also by the following:

Meyer v. United States, 67 F. (2d) 223 (C. C. A. 9th);

United States v. Hodorowicz, 105 F. (2d) 218 (C. C. A. 7th); cert. den., 308 U. S. 584, 60 Sup. Ct. 108, 84 L. Ed. 489;

Tucker, et al. v. United States, 299 Fed. 235 (C. C. A. 7th);

Kelly v. United States, 258 Fed. 392 (C. C. A. 6th); cert. den., 249 U. S. 616, 39 Sup. Ct. 391, 63 L. Ed. 803.

II.

Appellant, Under the Evidence Produced by the Government at the Trial of the Cause in Connection With Count Two of the Indictment, Was Properly Charged With Having Unlawfully and Feloniously Received, Concealed, and Facilitated the Transportation After Importation of the Narcotics.

In this connection it is urged by appellant Kramer that, as the evidence reveals that Katherine Wilson rather than appellant had the narcotics concealed upon her person and that as some act had to be done other than the mere importation, conviction on this count cannot stand.

However, in

> *Pon Wing Quong v. United States,* 111 F. (2d) 751 (C. C. A. 9th),

the problem of facilitating the transportation and concealment of narcotics immediately after the crossing of international lines was similarly presented. The appeal there arose from a judgment of conviction on 3 counts for violations of the Jones-Miller Act (Section 174, Title 21, United States Code). The first count accused appellant of fraudulently and knowingly importing smoking opium; the second count charged him, of facilitating the transportation of the narcotics; while the third accused the appellant of fraudulently and knowingly concealing and facilitating the concealment of the opium after its importation into the United States.

The evidence in that case disclosed that customs officials had been informed that an attempt was under way to smuggle into the country contraband smoking opium; and, while watching a trunk containing the narcotics as it was still in customs, they observed the appellant place a customs label upon the corner of the trunk. The appellant was convicted of the substantive offense by virtue of the statute making an aider and abetter a principal. (Section 550, Title 18, United States Code.)

This court in affirming the judgment of conviction stated at page 756, in language particularly appropriate to the instant cause:

> "With the fact of importation established when the S. S. 'President Coolidge' crossed the three mile limit approaching San Francisco (United States v. Caminata, D. C. Pa., 1912, 194 F. 903, and Fiddelke v. United States, *supra*), the problem of facilitating the transportation after such crossing of the line is presented. After the trunk was landed in the corral it was not actually moved, except by the customs officers, and if actual movement after its arrival in the corral were the requisite for the commission of the crime of facilitating transportation after importation it could not be held to have been committed. However, here the trunk containing the opium was in the act of being transported after importation from the time it left the three mile limit until it reached its intended destination in the United States, to-wit, delivered to the consignee. *Anything done to make the continuance of that trip 'less difficult' would constitute facilitation of its transportation.* Since the term 'facilitate' seems not to have

any special legal meaning, the framers of this statute must have had in mind the common and ordinary definition as expressed by a standard dictionary. Quoting from Webster's Unabridged Dictionary, 'facilitate' is defined as follows: 'To make easy or less difficult; to free from difficulty or impediment; as to facilitate the execution of a task.'

"The only reason for the placing of the sticker on the trunk was to permit the trunk and its contents to pass through the customs without inspection. Certainly this act made the progress of transportation of the trunk 'less difficult' and 'freed it from difficulty or impediment' and in short facilitated transportation. The method of facilitation used was not one of actual physical movement at the moment but rather one related to the continuity of the trunk's present status of being in the course of transportation. It is unnecessary to more than cite a reference wherein numerous cases are cited supporting the view that temporary stoppage of goods in the stream of commerce does not interrupt the continuity of transportation. See 11 Am. Jur. p. 60, f. n. 4.

"The same objection as made to the failure to prove the *corpus delicti* in the second count is made to the third count, as to the crime of facilitating the concealment of the opium after importation. The act of pasting the sticker upon the trunk was one which concealed the fact that the trunk contained contraband by representing that it had been inspected and was released from customs. *Anything done to further the concealment by misleading, or in any other manner avoiding the inspectors from discovering the contents thereof would constitute facilitating the concealment.*" (Emphasis supplied.)

In the instant case the government's evidence disclosed that appellant drove the automobile carrying Miss Wilson across the international line and was held at the customs inspection station by agents where he was asked by a customs guard whether or not he had brought anything from Mexico. He stated that he had brought nothing, as did defendant Wilson. [R. 29, 46.] It thus appears that appellant attempted to mislead the customs officers to avoid their finding of the concealed narcotics. It is respectfully submitted that these actions of appellant were sufficient to constitute a facilitation of transportation and concealment within the meaning of the statute.

Nor was it material that Katherine Wilson had the narcotics concealed on her person rather than appellant.

In

> *United States v. Cohen,* 124 F. (2d) 164 (C. C. A. 2d), cert. den., 315 U. S. 811, 62 Sup. Ct. 796, 86 L. Ed. 210, rehrg. den., 316 U. S. 707, 62 Sup. Ct. 941, 86 L. Ed. 1774,

a similar question was presented. In affirming the conviction of appellants the court at page 165 stated:

> "Under the first statute we have quoted it was only necessary to show possession of the narcotics to establish guilt and under the second statute, making an abettor a principal, it was not necessary that each of the defendants should have had the narcotics, but only that one or more of them had possession while the others aided in the illicit transaction to which that possession was incidental. United States v. Hodorowicz, 7 Cir., 105 F. (2d) 218, 220, certiorari denied, 308 U. S. 584, 60 S. Ct. 108, 84 L. Ed. 489; Vilson v. United States, 9 Cir., 61 F. (2d) 901."

III.

Appellant's Conviction, Based Upon Counts One and Two, Constitutes No Bar to a Conviction of a Conspiracy to Commit Those Substantive Offenses Charged in the Indictment.

With reference to this contention appellant argues at page 9 of his opening brief

> "* * * 'that although it is proper for Congress to create separate and distinct offenses growing out of the same transaction where it is necessary in proving one offense to prove every essential element of another growing out of the same act, conviction of former is a bar to prosecution for latter.' Therefore, the conviction of the conspiracy and the substantive offenses in this case are inconsistent and cannot stand."

It is well settled, however, that the crime of conspiracy is a separate offense from that of the objective crime sought to be accomplished through the agreement.

United States v. Rabinowich, 238 U. S. 78, 35 Sup. Ct. 682, 59 L. Ed. 1211;

Marino et al. v. United States, 91 F. (2d) 691 (C. C. A. 9th);

Hall v. United States, 78 F. (2d) 168 (C. C. A. 10th);

Enrique Rivera et al. v. United States, 57 F. (2d) 816 (C. C. A. 1st);

Gerson v. United States, 25 F. (2d) 49 (C. C. A. 8th).

This is true whether or not the objective sought to be accomplished is successfully consummated, as the crime is

complete when an overt act to effect the object of the conspiracy has been accomplished.

Heike v. United States, 227 U. S. 131, 33 Sup. Ct. 226, 57 L. Ed. 450;

McDonald v. United States, 89 F. (2d) 128 (C. C. A. 8th), cert. den., 301 U. S. 697, 57 Sup. Ct. 925, 81 L. Ed. 1352; rehrg. den., 302 U. S. 773, 58 Sup. Ct. 4, 82 L. Ed. 599;

United States v. Shapiro, 103 F. (2d) 775 (C. C. A. 2d); cert. den., 301 U. S. 708, 57 Sup. Ct. 942, 81 L. Ed. 1362;

Curtis v. United States, 67 F. (2d) 943 (C. C. A. 10th);

Graham v. United States, 15 F. (2d) 740 (C. C. A. 8th); cert. den., 274 U. S. 743, 47 Sup. Ct. 587, 71 L. Ed. 1321.

Further, a prosecution charging a conspiracy to commit an offense against the United States, together with a prosecution for the substantive offense made the object of the conspiracy is proper where there is no complete identity between the two crimes.

In

Laughter v. United States, 259 Fed. 94 (C. C. A. 6th); cert. den., 249 U. S. 613, 39 Sup. Ct. 388, 63 L. Ed. 802,

appellant, who was previously convicted of a conspiracy to violate the Reed amendment, was subsequently convicted of the substantive offense to which the conspiracy related. The question of double jeopardy was raised by appellant on appeal. The court in affirming judgment at page 99 stated:

"In this case, No. 3212, Laughter insists that he has been twice punished for the same offense, and

thus raises, in another aspect, the proposition that the conspiracy and the substantive offense cannot be separately prosecuted. The general unsoundness of this claim has already been discussed. So far as there may be in any case a relation between the two which ought to prevent a double prosecution, it will be only in those cases where there is complete identity between those acts which are the overt acts essential to make the conspiracy punishable and those acts which are necessary to make out the substantive offense. That complete identity does not here exist. The actual taking of the liquor from the river boat onto the shore was alone sufficient to constitute participation in interstate transportation and to justify conviction of the substantive offense; but this act was neither pleaded as one of the overt acts in the conspiracy case, nor was it essential to make out guilt of the conspiracy. The utmost effect of such similarity as here existed in the proofs relied upon to show the two offenses was to advise the discretion of the court in imposing the second sentence; it cannot support any claim of error."

Further authority may be found in

Hall v. United States, 109 F. (2d) 976 (C. C. A. 10th);

Sneed v. United States, 298 Fed. 911 (C. C. A. 5th); cert. den. 265 U. S. 590; 44 Sup. Ct. 635; 68 L. Ed. 1195;

Goukler v. United States, 294 Fed. 274 (C. C. A. 3rd);

Murry v. United States, 282 Fed. 617 (C. C. A. 8th);

United States v. Nash, et al., 51 F. (2d) 253 (D. C. N. Y.); aff., 54 F. (2d) 1006; cert. den., 285 U. S. 556, 52 Sup. St. 457, 76 L. Ed. 945;

Cor. Juris., Vol. 16, p. 280.

IV.

The Evidence as Presented by the Government Was Sufficient to Sustain and Justify the Conviction on Any One of the Three Counts.

In this connection appellant urges this Honorable Court to the effect that his conviction should be set aside as one of the governments witnesses, Katherine Wilson, was an accomplice to the crime and consequently her testimony should have been disregarded by the trial judge.

It is well settled, however, that, although such testimony should perhaps be carefully scrutinized by the jury or trial judge, nevertheless a conviction may well rest upon the uncorroborated testimony of an accomplice.

Hass v. United States, 31 F. (2d) 13 (C. C. A. 9th); cert. den., 279 U. S. 864, 49 Sup. Ct. 480, 73 L. Ed. 1003;

Ahearn v. United States, 3 F. (2d) 808 (C. C. A. 9th); cert. den., 268 U. S. 692, 45 Sup. Ct. 511, 69 L. Ed. 1160;

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United States v. Fawcett, 115 F. (2d) 764 (C. C. A. 3rd);

Hall v. United States, 109 F. (2d) 976 (C. C. A. 10th).

Moreover in the instant case evidence produced by the government at the time of trial tended to and did substantially support the testimony of Katherine Wilson. [Testimony of Joseph Zung, R. 23-25; Dorothea Bullock, R. 25-26; Customs Inspectors Buncasel, Scott, and Mitchell, R. 43-46; Customs Agent Linden, R. 48, 53, and Acting Inspectress Mary Clark, R. 47-48.]

Further, the record discloses, contrary to appellant's contention, that the trial judge carefully weighed the evidence and testimony produced at the time of trial and determined the relative veracity of each witness. After trial and prior to the determination of guilt, the trial judge commented on the evidence produced by both the government and defense and in connection therewith stated:

> "Now, there is an absolute conflict here in the evidence on some very definite points, and as I say, whether I like it or not, I have to believe one side or the other. Now, I must be perfectly frank. I didn't believe Mrs. Kramer. I don't believe that she took the stand and told the truth, if I have to judge it from my knowledge of human reactions. * * * She knew that they had brought some colored people down in Tijuana. Whether she knew that two of them were or had been narcotic addicts doesn't develop. I don't think it makes very much difference. It is rather hard for me to believe that she rode down there with these three colored people just as a pleasure trip * * * I did not believe Mr. Kramer, either, to be perfectly frank. It is human to

want to save yourself, naturally, from severe punishment. And I think he told the best story he could, but it didn't convince me, and I don't believe it would have convinced the jury, if we had been fortunate enough to have a jury here. I don't believe that Kramer came down here on any social visit, or went down to Tijuana with these three colored people on any social visit, or on any such innocent expedition as he contends. * * * and I am frank to say I did believe the Wilson woman." [R. 68-71.]

Even assuming, however, but certainly not conceding, that the evidence failed to support appellant's conviction on any one or two counts charged in the indictment, nevertheless, where appellant has received concurrent sentences as here [R. 10], none of which exceeds the maximum penalty perscribed by the statute, and the evidence is sufficient to justify a conviction on any one count, appellant cannot complain of error on appeal.

United States v. Trenton Potteries Company, et al., 273 U. S. 392, 47 Sup. Ct. 377, 71 L. Ed. 700;

Claassen v. United States, 142 U. S. 140, 12 Sup. Ct. 169, 35 L. Ed. 966;

Sugarman v. United States, 35 F. (2d) 663 (C. C. A. 9th); cert. den., 281 U. S. 723, 50 Sup. Ct. 239, 74 L. Ed. 1141;

Taran v. United States, 88 F. (2d) 54 (C. C. A. 8th);

Flowers v. United States, 83 F. (2d) 78 (C. C. A. 8th);

Chepo v. United States, 46 F. (2d) 70 (C. C. A. 3rd).

Conclusion.

From the foregoing it is respectfully submitted by the government that the judgment of the trial court was not contrary to law and that the evidence produced at the trial of the cause was ample to support appellant's conviction upon all 3 counts as charged in the indictment.

Respectfully submitted,

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APPENDIX.

United States Code, Title 21, Section 174.

"If any person fraudulently or knowingly imports or brings any narcotic drug into the United States or any territory under its control or jurisdiction, contrary to law, or assists in so doing or receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale of any such narcotic drug after being imported or brought in, knowing the same to have been imported contrary to law, such person shall upon conviction be fined not more than $5,000 and imprisoned for not more than ten years. Whenever on trial for a violation of this section the defendant is shown to have or to have had possession of the narcotic drug, such possession shall be deemed sufficient evidence to authorize conviction unless the defendant explains the possession to the satisfaction of the jury."

United States Code, Title 18, Section 88.

"If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than $10,000, or imprisoned not more than two years, or both."

United States Code, Title 18, Section 550.

"Whoever directely commits any act constituting an offense defined in any law of the United States, or aids, abets, counsels, commands, induces, or procures its commission, is a principal."